

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA	§	
Plaintiff,	§	
	§	
v.	§	No. 4:19-cv-00862
	§	
\$1,860,907.10 in UNITED STATES	§	
CURRENCY	§	
Defendant.	§	

VERIFIED COMPLAINT FOR FORFEITURE IN REM

In accordance with Fed. R. Civ. P. Supplemental Rule G(2), the United States of America, Plaintiff, brings this complaint and alleges as follows:

Nature of the Action

1. This is an action to forfeit property to the United States for a violation of 8 U.S.C. §§ 1324(a)(1)(A)(iii), (iv), (v), and 1324(a)(3)(A).

Defendant In Rem

2. The Defendant Property is:

a. \$1,379,142.59 in United States currency seized from Frost Bank account #XXXXXX6858 in the name of Vilhauer Enterprises, LLC,

b. \$9,368.83 in United States currency seized from Frost Bank account #XXXXXX7651 in the name of Vilhauer Enterprises, LLC, and

c. \$472,395.68 in United States currency seized from Frost Bank account #XXXXXX7285 in the name of MSG Leasing, LLC.

Jurisdiction and Venue

3. The Court has subject matter jurisdiction over an action commenced by the United States pursuant to 28 U.S.C. § 1345, and over an action for forfeiture pursuant to 28 U.S.C. § 1355(a).

4. The Court has *in rem* jurisdiction over The Property pursuant to 28 U.S.C. § 1355(b)(1)(A) because acts or omissions giving rise to the forfeiture occurred in this district.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1355(b)(1)(A) because acts or omissions giving rise to the forfeiture occurred in this district.

Basis for Forfeiture

6. The Property is subject to forfeiture pursuant to 8 U.S.C. § 1324(b) because it is gross proceeds of a violation of 8 U.S.C. § 1324(a), and any property traceable to such proceeds, and pursuant to 18 U.S.C. § 981(a)(1)(C) because it is any property, real or personal, which constitutes or is derived from proceeds traceable to an offense constituting “specified unlawful activity” as defined in 18 U.S.C. § 1956(c)(7), or a conspiracy to commit such offense.

Facts

7. The facts and circumstances supporting the forfeiture of the above-described property are briefed below and contained in the Affidavit of Nicole Hendricks, which is attached hereto and incorporated herein by reference.

a. Vilhauer Enterprises, LLC, located at 5760 State Highway 121, Suite 250, Plano, Texas, a location within the Eastern District of Texas, provides excavation services for the construction industry. Vilhauer's website details services to include mass excavation, moisture conditioning, sub-grade prep, fine grading, demolition, tree clearing, erosion control and surveying.

b. MSG Leasing, LLC, located at 950 W. Crosby Road, Carrollton, Texas, provides expertise in equipment sales and rentals. MSG's website details that MSG Leasing offers a complete solution to fleet management, to include the management of commercial heavy machinery and commercial trucks and trailers.

c. On September 20, 2018, as part of a national initiative, Homeland Security Investigations (hereinafter, "HSI") served Vilhauer with a Notice of Inspection (hereinafter, "NOI") requesting the production of United States Citizen and Immigration Services Form(s) I-9 and supporting documents.

d. HSI Agents conducted database checks based on information and supporting documentation provided on the 475 Forms I-9 received from Vilhauer as a result of the 2018 NOI.

e. The query results showed that 211 of the 475 2018 Forms I-9 contained Personal Identification Information (hereinafter, “PII”) that was not assigned or inconsistent with the employee(s) utilizing the PII to obtain employment.

f. Upon service of the NOI, investigators learned that Vilhauer had been previously served with a NOI on May 11, 2015, by HSI that resulted in a Settlement Agreement with Vilhauer agreeing to pay an administrative fine in the amount of \$750.00 and an admittance of allegations set forth in the Notice of Intent to Fine, which identified 113 employees as having provided suspicious or fraudulent documentation to obtain employment.

g. HSI identified approximately 59 employees who were still being paid consistently from 4th quarter 2016 through 2nd quarter 2018, despite having allegedly been terminated on or prior to June 18, 2016. Agents identified approximately 51 employees who were still being paid during the 3rd and 4th quarter 2018.

h. HSI found that between the Vilhauer operating account and Vilhauer payroll account, approximately 71 of the 109 previously reported terminated employees continued to receive checks from Vilhauer after the reported termination date.

i. HSI’s investigation revealed discrepancies in the recruiting and hiring process of Vilhauer involving incomplete and fraudulent documents, as well as the practice of pretending to terminate an illegal employee only for that employee to continue working under different identifying information.

j. Michael Smith is the CEO of Vilhauer. HSI discovered Michael Smith also has an interest in MSG Leasing; MSG is ostensibly a separate company from Vilhauer that leases equipment to Vilhauer for Vilhauer's various contracts. HSI learned the majority of MSG Leasing's business involves leasing to Vilhauer, and that there is an overlap in individuals with ownership interest in Vilhauer and MSG Leasing, as well as equipment and employees.

k. Fifty one of the employees Vilhauer reported to TWC in 2018 that received wages in 2018 were identified as having suspect documents in the 2015/2016 Form I-9 in section. This represented 11% of Vilhauer's workforce.

l. Vilhauer Frost Bank account #XXXXXX6858 received and maintained gross proceeds obtained from continuing to employ individuals not authorized to work in the United States. Approximately \$40,289,197 of gross proceeds was deposited for the period July 1, 2018 through December 31, 2018.

m. Approximately \$9,286,600 dollars was transferred from account #XXXXXX6858 into Vilhauer Frost Bank account #XXXXXX7651 for the period July 1, 2018 through December 31, 2018.

n. Approximately \$5,960,092 dollars was transferred from account #XXXXXX6858 into MSG Leasing Frost Bank account #XXXXXX7285 for the period July 1, 2018 through December 31, 2018.

o. The chart below applies the 11% of Vilhauer's workforce whom were previously identified as having suspect documents during the 2015/2016 I-9 inspection, individuals that Vilhauer stated were terminated on or prior to June 18, 2016, who continued to receive wages during the 3rd and 4th quarter 2018.

Account Number:	Deposits/Proceeds from July-December 2018:	Amount of Funds Subject to Forfeiture	Amount of Funds Seized
XXXXXX6858	\$40,289,197	\$4,431,811	\$1,379,142.59
XXXXXX7651	\$9,286,600	\$1,021,526	\$9,368.83
XXXXXX7285	\$5,960,092	\$655,610	\$472,395.68

Potential Claimants

8. The known potential claimants to The Property are:

a. Vilhauer Enterprises, LLC, - 5760 State Highway 121, Suite 250, Plano, Texas,

b. MSG Leasing, LLC, - 950 W. Crosby Road, Carrollton, Texas.

Claim for Relief

9. The United States respectfully requests that the Court forfeit The Property to the United States, award costs and disbursements in this action to the United States, and order any other relief that the Court deems appropriate.

Respectfully submitted,

JOSEPH D. BROWN
UNITED STATES ATTORNEY

/s/

Kevin McClendon
Assistant United States Attorney
State Bar No. 13408620
101 East Park Blvd., Suite 500
Plano, Texas 75074
(972) 509-1201
(972) 509-1209 (fax)

CERTIFICATION OF FILING OF MOTION TO SEAL

Pursuant to Local Rule CV-5(a)(7)(A), undersigned counsel certifies that on November 21, 2019, Plaintiff filed a Motion to Seal Affidavit Supporting the Complaint for Forfeiture In Rem.

[Doc. #2]

/s/

Kevin McClendon
Assistant United States Attorney

VERIFICATION PURSUANT TO 28 U.S.C. § 1746

I, Nicole Hendricks, hereby state that:

1. I am a Special Agent with the Homeland Security Investigations.
2. I have read this Complaint, and the information contained herein is true and correct to the best of my knowledge.
3. The information contained in this Complaint comes from the official files and records of the United States, statements from other law enforcement officers, and my investigation of this case.

I state and verify under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Nicole Hendricks", written over a horizontal line.

Nicole Hendricks

Homeland Security Investigations

Dated: *Nov. 20, 2019*

**Affidavit Supporting the
Complaint for Forfeiture In Rem
Filed Under Seal**

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA	§	
Plaintiff,	§	
	§	
v.	§	No. 4:19-cv-00862
	§	
\$1,860,907.100 IN UNITED STATES	§	
CURRENCY,	§	
Defendant.	§	

ORDER FOR WARRANT OF ARREST IN REM

TO: The Clerk of the Court, United States District Court for the Eastern District of Texas

WHEREAS, on November 21, 2019, the United States of America filed a verified complaint for civil forfeiture in the United States District Court for the Eastern District of Texas against the following defendant property:

- a. \$1,379,142.59 in United States currency seized from Frost Bank account #XXXXXX6858 in the name of Vilhauer Enterprises, LLC;
- b. \$9,368.83 in United States currency seized from Frost Bank account #XXXXXX7651 in the name of Vilhauer Enterprises, LLC; and
- c. \$472,395.68 in United States currency seized from Frost Bank account #XXXXXX7285 in the name of MSG Leasing, LLC.

alleging that the property is subject to seizure and civil forfeiture to the United States for the reasons alleged in the complaint; and

WHEREAS, the Court, having reviewed the Complaint and the Government's

Application for Warrant of Arrest in Rem, finds, the defendant property is currently in the possession, custody, or control of the United States; and

WHEREAS, Supplemental Rule G(3)(b)(i) provides that the clerk must issue a warrant to arrest the property if it is in the government's possession, custody, or control;

YOU ARE, THEREFORE, HEREBY COMMANDED to issue an arrest warrant in rem for the defendant property pursuant to Supplemental Rule G(3)(b)(i); and

YOU ARE FURTHER COMMANDED to deliver the arrest warrant in rem to a person or organization authorized to execute it who may be a marshal or any other United States officer or employee, someone under contract with the United States, or someone specially appointed by the Court for that purpose, pursuant to Supplemental Rule G(3)(c)(i).

IT IS SO ORDERED,

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA	§	
Plaintiff,	§	
	§	
v.	§	No. 4:19-cv-00862
	§	
\$1,860,907.10 IN UNITED STATES	§	
CURRENCY,	§	
Defendant.	§	

WARRANT OF ARREST IN REM

TO: The United States Customs and Border Protection or Department of Homeland Security Homeland Security Investigations for the Eastern District of Texas and/or any other United States officer or employee, someone under contract with the United States, or someone specially appointed by the court.

On November 21, 2019, the United States filed a verified complaint for civil forfeiture in the United States District Court for the Eastern District of Texas against the following defendant property:

- a. \$1,379,142.59 in United States currency seized from Frost Bank account #XXXXXX6858 in the name of Vilhauer Enterprises, LLC;
- b. \$9,368.83 in United States currency seized from Frost Bank account #XXXXXX7651 in the name of Vilhauer Enterprises, LLC; and
- c. \$472,395.68 in United States currency seized from Frost Bank account #XXXXXX7285 in the name of MSG Leasing, LLC.

alleging that the property is subject to seizure and forfeiture to the United States for the reasons alleged in the complaint.

The defendant property is currently in the possession, custody, or control of the United States.

In these circumstances, Supplemental Rule G(3)(b)(i) directs the Clerk of the Court to issue an arrest warrant in rem for the defendant property.

Supplemental Rule G(3)(c)(i) provides that the warrant of arrest in rem must be delivered to a person or organization authorized to execute it who may be a marshal or any other United States officer or employee, someone under contract with the United States, or someone specially appointed by the court for that purpose.

YOU ARE COMMANDED to do the following:

1. To arrest the defendant property as soon as practicable by serving a copy of this warrant on the custodian in whose possession, custody or control the property is presently found, and to use whatever means may be appropriate to protect and maintain it in your custody until further order of this Court.

2. Promptly after execution of this process, to file the same in this Court with your return thereon, identifying the individual(s) upon whom copies were served and the manner employed.

Dated:

DAVID O'TOOLE
Clerk of the Court
United States District Court for the
Eastern District of Texas

By: _____
Deputy Clerk

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Kevin McClendon, USAO, 101 E. Park Blvd., Suite 500
Plano, Texas 75074 (972) 509-1201

DEFENDANTS

\$1,860,907.10 in U.S. currency

County of Residence of First Listed Defendant Collin
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input checked="" type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify) _____
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

This is an in rem civil forfeiture proceeding pursuant to 18 USC 981

Brief description of cause:

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/21/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ Kevin McClendon

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____